

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

## I. (a) PLAINTIFFS

**SONY BMG MUSIC ENTERTAINMENT; UMG RECORDINGS, INC.;  
WARNER BROS. RECORDS INC.; and BMG MUSIC**

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
**New York County, NY**

(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANT

**JOHN DOE**

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

**HOLME ROBERTS & OWEN LLP**

**Dawniell Zavala (SBN: 253130)**

**560 Mission Street, 25th Floor**

**San Francisco, CA 94105-2994**

**Phone: (415) 268-2000**

**Fax: (415) 268-1999**

## ATTORNEYS (IF KNOWN)

**E-filing**

**BZ**

**ADR**

## II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX ONLY)

(For Diversity Cases Only)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal <input type="checkbox"/> 28 USC 158 <input type="checkbox"/> 423 Withdrawal <input type="checkbox"/> 28 USC 157 <b>PROPERTY RIGHTS</b> <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge <input type="checkbox"/> 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Amer w/disab - Empl <input type="checkbox"/> 446 Amer w/disab -Other <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW 405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party <input type="checkbox"/> 26 USC 7609

## VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

**17 U.S.C. § 501 et seq. — copyright infringement**

## VII. REQUESTED IN COMPLAINT

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23:

DEMAND \$

☐ CHECK YES only if demanded in complaint

Statutory damages; injunction

JURY DEMAND:

☐ YES

☒ NO

## VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

## IX. DIVISIONAL ASSIGNMENT

(CIVIL L.R. 3-2) (PLACE AN "X" IN ONE BOX ONLY)

☒

SAN FRANCISCO/OAKLAND

☐ SAN JOSE

DATE August 21, 2008

SIGNATURE OF ATTORNEY OF RECORD

*[Handwritten Signature]*

08 AUG 21 PM 2:23  
FILED  
RICHARD W. BROWN  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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UMG RECORDINGS, INC.; WARNER  
BROS. RECORDS INC.; and BMG MUSIC

E-filing

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
DIVISION

BZ

SONY BMG MUSIC ENTERTAINMENT, a  
Delaware general partnership; UMG  
RECORDINGS, INC., a Delaware corporation;  
WARNER BROS. RECORDS INC., a Delaware  
corporation; and BMG MUSIC, a New York  
general partnership,

Plaintiffs,

v.

JOHN DOE,

Defendant.

CV 08

3994

COMPLAINT FOR COPYRIGHT  
INFRINGEMENT

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Case No. \_\_\_\_\_

#39475 v1

ORIGINAL

**JURISDICTION AND VENUE**

1  
2 1. This is a civil action seeking damages and injunctive relief for copyright infringement  
3 under the copyright laws of the United States (17 U.S.C. § 101 *et seq.*).

4 2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal  
5 question); and 28 U.S.C. § 1338(a) (copyright).

6 3. Venue in this District is proper. See 28 U.S.C. §§ 1391(b), 1400(a). Although the  
7 true identity of Defendant is unknown to Plaintiffs at this time, on information and belief, Defendant  
8 may be found in this District and/or a substantial part of the acts of infringement complained of  
9 herein occurred in this District. On information and belief, personal jurisdiction in this District is  
10 proper because Defendant, without consent or permission of the copyright owner, disseminated over  
11 the Internet copyrighted works owned and/or controlled by Plaintiffs. On information and belief,  
12 such illegal dissemination occurred in every jurisdiction in the United States, including this one. In  
13 addition, Defendant contracted with an Internet Service Provider ("ISP") found in this District to  
14 provide Defendant with the access to the Internet which facilitated Defendant's infringing activities.

**PARTIES**

15  
16 4. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a Delaware general  
17 partnership, with its principal place of business in the State of New York.

18 5. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the  
19 laws of the State of Delaware, with its principal place of business in the State of California.

20 6. Plaintiff Warner Bros. Records Inc. is a corporation duly organized and existing  
21 under the laws of the State of Delaware, with its principal place of business in the State of  
22 California.

23 7. Plaintiff BMG Music is a general partnership duly organized and existing under the  
24 laws of the State of New York, with its principal place of business in the State of New York.

25 8. The true name and capacity of Defendant are unknown to Plaintiffs at this time.  
26 Defendant is known to Plaintiffs only by the Internet Protocol ("IP") address assigned to Defendant  
27 by his or her ISP on the date and time of Defendant's infringing activity. See Exhibit A. Plaintiffs  
28



1 believe that information obtained in discovery will lead to the identification of Defendant's true  
2 name.

3 **COUNT I**  
4 **INFRINGEMENT OF COPYRIGHTS**

5 9. Plaintiffs incorporate herein by this reference each and every allegation contained in  
6 each paragraph above.

7 10. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of  
8 exclusive rights under United States copyright law with respect to certain copyrighted sound  
9 recordings, including, but not limited to, all of the copyrighted sound recordings on Exhibit A to this  
10 Complaint (collectively, these copyrighted sound recordings shall be identified as the "Copyrighted  
11 Recordings"). Each of the Copyrighted Recordings is the subject of a valid Certificate of Copyright  
12 Registration issued by the Register of Copyrights to each Plaintiff as specified on each page of  
13 Exhibit A.

14 11. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the  
15 exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted  
16 Recordings to the public.

17 12. Plaintiffs are informed and believe that Defendant, without the permission or consent  
18 of Plaintiffs, has continuously used, and continues to use, an online media distribution system to  
19 download and/or distribute to the public certain of the Copyrighted Recordings. Exhibit A identifies  
20 the IP address with the date and time of capture and a list of copyrighted recordings that Defendant  
21 has, without the permission or consent of Plaintiffs, downloaded and/or distributed to the public.  
22 Through his or her continuous and ongoing acts of downloading and/or distributing to the public the  
23 Copyrighted Recordings, Defendant has violated Plaintiffs' exclusive rights of reproduction and  
24 distribution. Defendant's actions constitute infringement of Plaintiffs' copyrights and/or exclusive  
25 rights under copyright. (In addition to the sound recordings listed on Exhibit A, Plaintiffs are  
26 informed and believe Defendant has, without the permission or consent of Plaintiffs, continuously  
27 downloaded and/or distributed to the public additional sound recordings owned by or exclusively  
28 licensed to Plaintiffs or Plaintiffs' affiliate record labels, and Plaintiffs believe that such acts of

1 infringement are ongoing. Exhibit A includes the currently-known total number of audio files being  
2 distributed by Defendant.)

3 13. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on  
4 each respective album cover of each of the sound recordings identified in Exhibit A. These notices  
5 of copyright appeared on published copies of each of the sound recordings identified in Exhibit A.  
6 These published copies were widely available, and each of the published copies of the sound  
7 recordings identified in Exhibit A was accessible by Defendant.

8 14. Plaintiffs are informed and believe that the foregoing acts of infringement have been  
9 willful, intentional, and in disregard of and with indifference to the rights of Plaintiffs.

10 15. As a result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights  
11 under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) against  
12 Defendant for each infringement of each copyrighted recording. Plaintiffs further are entitled to  
13 their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

14 16. The conduct of Defendant is causing and, unless enjoined and restrained by this  
15 Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated  
16 or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502  
17 and 503, Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing  
18 Plaintiffs' copyrights, and ordering that Defendant destroy all copies of copyrighted sound  
19 recordings made in violation of Plaintiffs' exclusive rights.

20 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

21 1. For an injunction providing:

22 "Defendant shall be and hereby is enjoined from directly or indirectly  
23 infringing Plaintiffs' rights under federal or state law in the  
24 Copyrighted Recordings and any sound recording, whether now in  
25 existence or later created, that is owned or controlled by Plaintiffs (or  
26 any parent, subsidiary, or affiliate record label of Plaintiffs)  
27 ("Plaintiffs' Recordings"), including without limitation by using the  
28 Internet or any online media distribution system to reproduce (*i.e.*,  
download) any of Plaintiffs' Recordings or to distribute (*i.e.*, upload)  
any of Plaintiffs' Recordings, except pursuant to a lawful license or  
with the express authority of Plaintiffs. Defendant also shall destroy  
all copies of Plaintiffs' Recordings that Defendant has downloaded  
onto any computer hard drive or server without Plaintiffs'  
authorization and shall destroy all copies of those downloaded

recordings transferred onto any physical medium or device in Defendant's possession, custody, or control."

2. For statutory damages for each infringement of each Copyrighted Recording pursuant to 17 U.S.C. § 504.

3. For Plaintiffs' costs in this action.

4. For Plaintiffs' reasonable attorneys' fees incurred herein.

5. For such other and further relief as the Court may deem just and proper.

Dated: August 21, 2008

HOLME ROBERTS & OWEN LLP

By



DAWNIELL ZAVALA

Attorney for Plaintiffs

SONY BMG MUSIC ENTERTAINMENT; UMG  
RECORDINGS, INC.; WARNER BROS.  
RECORDS INC.; and BMG MUSIC



**EXHIBIT A****JOHN DOE****IP Address:** 169.233.44.26 2008-01-20 08:35:57 EST**CASE ID#** 156165331**P2P Network:** GnutellaUS**Total Audio Files:** 1147

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
SONY BMG MUSIC ENTERTAINMENT	Switchfoot	Meant to Live	The Beautiful Letdown	347-967
UMG Recordings, Inc.	Black Eyed Peas	Anxiety	Elephunk	334-398
SONY BMG MUSIC ENTERTAINMENT	Mariah Carey	Without You	Music Box	178-631
Warner Bros. Records Inc.	Green Day	Minority	Warning	288-352
UMG Recordings, Inc.	Black Eyed Peas	Bebot	Monkey Business	378-166
BMG Music	Usher	Bad Girl	Confessions	354-784
UMG Recordings, Inc.	Sum 41	The Hell Song	Does This Look Infected?	337-798

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Case No. \_\_\_\_\_

#39475 v1